the same grade. Officials whom the Commission has decided to retire do not enjoy any preference in that respect over the other officials who qualify for consideration. They must however have an adequate opportunity properly to safeguard their interests.

In Case 131/82

ENRICO ANGELINI, a former official of the Commission of the European Communities, of 111 Avenue de Floride, 1120 Brussels, represented by Edmond Lebrun of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Tony Biever, Advocate, 83 Boulevard Grande-Duchesse-Charlotte,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Principal Legal Adviser, Bernard Paulin, acting as Agent, assisted by Robert Andersen of the Brussels Bar, with an address for service in Luxembourg at the office of Oreste Montalto, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the annulment of the defendant's decisions to retire the applicant and not to assign him to another post,

THE COURT (Third Chamber)

composed of: U. Everling, President of Chamber, Lord Mackenzie Stuart and Y. Galmot, Judges,

Advocate General: G. F. Mancini
Registrar: J. A. Pompe, Deputy Registrar

gives the present

JUDGMENT

Facts and Issues

I — Facts and written procedure

The applicant is a former official of the Commission classified in Grade A 2. He took up his duties with the Commission in 1959. He was assigned to Directorate General IX for Personnel and Administration as from 1963. From 1970 to 1980 he was Director of the General Services and Office Equipment Directorate. At that time, the Commission decided to reduce the number of administrative units and, in particular, to replace three of the directorates in that directorate general, including Directorate C of which the applicant was the director, by only two directorates. The applicant was appointed to the post of chief adviser with the following responsibilities: traineeships within the Commission, organization of training for and visits by civil servants of the Member States, exchanges for officials and relations with the European Schools. One year later, the Commission decided to reorganize its departments and the responsibilities thereof and in particular decided on 28 July 1981 to transfer the organization of traineeships to the Secretariat General and exchanges of officials to the Careers Division, whilst a special division was created to deal with relations with the European Schools.

The applicant was informed by the President of the Commission in a letter dated 4 May 1981 that it was intended to adopt a measure retiring him on the basis of Article 50 of the Staff Regulations. Within the framework of the guidelines laid down on 26 March 1980 on the basis of the Spierenburg and Ortoli reports,[1] the Commission planned to dispense with certain posts of chief adviser. Upon being invited to submit his observations, the applicant pointed out an apparent contradiction between the creation of his post of chief adviser on the basis of the Spierenburg and Ortoli report and the abolition of the same post on the basis of the same report. The Commission nevertheless decided on 8 July 1981 to apply Article 50 of the Staff Regulations. The applicant was retired in the interests of the service with effect from 1 November 1981. He was not assigned to another post in his category corresponding to his grade and he therefore received the benefits payable in such cases.

The applicant lodged a complaint under Article 90 (2) of the Staff Regulations, seeking the annulment of the decision not to accept his application for the post of Director of Personnel and annulment of the decision whereby that post was filled.

The applicant lodged a second complaint on 27 October 1981, seeking annulment of the defendant's decision not to accept his application for the post of director of the Directorate for General Admin-

1 — Bulletin of the European Communities 1980, No 3, point 2.3.3; Fourteenth General Report on the Activities of the Commission, point 29.

istration and for annulment of the decision whereby that post was filled.

The Commission did not reply to those complaints and this was deemed to constitute an implied decision rejecting them, against which an action might be brought four months after the day on which the complaints were lodged. The Commission rejected the complaints by decision on 11 May 1982, after the present action was brought.

The applicant brought the present action by application lodged at the Court Registry on 23 April 1982. The written procedure followed the normal course.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court (Third Chamber) decided to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

The applicant claims that the Court should:

A. Primarily:

1. Annul the defendant's decision of 8 July 1981 retiring the applicant;

2. Annul the implied decision rejecting the complaint which was lodged in that behalf on 29 September 1981;

B. In the alternative:

3. Annul the defendant's decision not to assign the applicant to another post in his category corresponding to his grade;

4. Annual the defendant's decisions, notified on 25 August 1981 and 4 November 1981, not to accept the applicant's application for the post of Director of Personnel (Directorate General IX-A) and Director of Directorate IX-B for General Administration and, consequently, the decisions making appointments to those posts;

5. Annul the implied decisions rejecting his complaints lodged against the above-mentioned decisions on 29 September and 27 October 1981 respectively;

6. Order the defendant to pay the costs.

The Commission claims that the Court should:

Dismiss the application;

Adjudicate as to costs in accordance with the relevant provisions.

III — Submissions and arguments of the parties

A — The decision to retire the applicant

According to the applicant, the decision retiring him does not state sufficiently, in the prescribed manner, the grounds on which it is based. The justification for the decision retiring him was worded as follows: "The Commission has decided, as part of a general internal reorganization, to dispense with certain posts of chief adviser, including that held by Mr Angelini . . ." That statement is entirely general and contains no specific details. A precise and specific statement of reasons is required, particularly because a reorganization of the Directorate General had already taken place one year earlier. The reasons for which a post which was regarded as necessary in the interests of the service in June 1980 had become unnecessary, likewise in the interests of the service, in July 1981

should have been stated. Neither is it sufficient to state in reply, as the President of the Commission stated in his letter of 15 May 1981, that "the fact that the Directorate General to which you belong has already been reorganized in the past cannot encroach upon the unrestricted power of appraisal vested in the Commission whereby it is entitled to adopt such measures as it today considers necessary for its efficient functioning". The contested decision erroneously indicates that in its letter of 24 June 1981 the Commission told the applicant of the reasons for the envisaged measure. In that letter no details were provided and no reply was given to the applicant's observations. Once again there were only generalities. The applicant refers to the judgment of the Court of 11 May 1978 in Case 34/77 *Oslizlok* [1978] ECR 1099, paragraph 18 of the decision.

The applicant also accuses the defendant of misuse of power. The contested decision was adopted within the framework of a generalized application of Article 50 of the Staff Regulations, the purpose of which is to create vacancies. The only reasons which can justify retirement pursuant to Article 50 of the Staff Regulations are those based on the objective requirements of the service or on an assessment of the individual qualities of officials in the light of those requirements. Article 50 of the Staff Regulations calls for a scrupulous examination of each individual case and cannot be relied upon for an operation akin to the American "spoils system", where a change of the President entails a shuffle of the senior officials. It is contrary to the principles governing the European Civil Service, the career system and stability of employment, even though that stability may not be absolute for an official in Grade A 1 or A 2. If, in the applicant's case, there really was an objective requirement of the service justifying his retirement, the Commission could have abolished that post but appointed the applicant to one of the three other vacant posts which had become vacant (see under heading B below). The applicant also stated that he was available for a post which the defendant envisaged creating for its delegation in Brasilia.

The Commission refers to the opinion of Mr Advocate General Warner in Case 34/77 *Oslizlok*, in which the Advocate General considered that decisions adopted pursuant to Article 50 are not required to state the grounds on which they are based. In its judgment in that case, the Court emphasized the considerable discretionary power vested in the Commission. The Commission is under an obligation scrupulously to examine the circumstances of the case and to give the official a prior opportunity properly to defend his interests. Even though there was no formal requirement for the decision retiring him to state the grounds on which it was based, the applicant was nevertheless aware of the reasons which induced the Commission to consider retiring him. Those reasons are apparent from the letters of 4 May and 24 June 1981. If, as part of a general internal reorganization, the Commission arrives at the conclusion that certain posts of chief adviser no longer fulfil a genuine requirement of the service, it is entitled to abolish them by recourse to the procedure under Article 50 of the Staff Regulations. Having been informed of that reason, the applicant had an opportunity to

submit his observations and in particular to put forward the arguments which, in his opinion, militated in favour of his post of chief adviser being maintained. His arguments did not convince the Commission, which decided to dispense with the post in question. The Commission is not obliged to give further explanations for its decision by stating the reasons for which it considered the applicant's post of chief adviser no longer to fulfil a genuine requirement of the service. *A fortiori*, it does not have to explain to the applicant why it chooses to maintain certain posts of chief adviser.

There is no contradiction between the creation of a post in June 1980 and its abolition in July 1981. The creation of a post of chief adviser to the Director General, to which the applicant was assigned, was a secondary effect and not the cause of the reorganization whereby three directorates were replaced by only two.

In a constant endeavour to strike the best possible balance between its departments and the work required of them, at its meeting of 28 July 1981 the Commission, following the orientation of the Spierenburg and Ortoli reports, considered that it was appropriate to improve the organization of Directorates A and B of Directorate General IX and to transfer to the Secretariat General responsibility for traineeships within the Commission and the organization of training and visits for civil servants of the Member States. The applicant's post of chief adviser was thus deprived of most of the functions relating thereto. The abolition of the post was necessary. It is apparent from the file the Commission carried out a scrupulous examination of the circumstances of the case and that it took note of the applicant's observations.

The Commission defends its right to adopt a series of measures retiring individual officials in the interests of the service, provided that none of such measures is in itself in any way vitiated. It does not dispute the fact that the measures in question were to some extent adopted in order to facilitate the recruitment of officials of Greek nationality but they were also adopted with a view to reorganization along the lines recommended by the Spierenburg and Ortoli reports. In particular, there was a critical evaluation of certain posts of chief adviser and a reappraisal of management functions. In other words, the various measures were in each case adopted on the basis of objective requirements of the service or the individual qualities of the officials concerned in the light of such requirements, or both of those factors. Having decided to dispense with a post of chief adviser, the Commission is not obliged to promote or transfer the holder of the post to another vacant post before abolishing his post.

The applicant emphasizes the fact that his assignment to the post of chief adviser was in implementation of the Spierenburg and Ortoli guidelines. He refers to an information bulletin issued by the Staff Committee in Brussels and an extract from the Staff Courier which deal, in critical fashion, with the Commission's decisions adopted on the basis of Article 50 of the Staff Regulations.

The applicant points out that it is apparent from the defendant's own written submissions that the applicant was retired by decision of 8 July 1981, before the decision to dispense with the post was taken on 28 July 1981 and even

before the communication of 17 July 1981 from Mr O'Kennedy, the member of the Commission with responsibility in that area, regarding reorganization of the directorate general and before the preparation of a document concerning that reorganization dated 24 July 1981, for discussions on the agenda of the Commission's meeting of 28 July 1981. The statement of reasons on which the retirement decision of 8 July 1981 was based is incorrect, to say the least, in so far as it states that the Commission had decided, within the framework of a general internal reorganization, to dispense with certain posts.

The allegations contained in the application regarding the generalized application of Article 50 of the Staff Regulations in order to create vacancies, the decision to dismiss officials on the pretext of retiring them, the lists of victims prepared on *a priori* basis without any consideration of specific situations and before recourse to the proper procedure, are, the applicant claims, substantiated.

In its rejoinder the Commission does not deny that the retirement measures may possibly have created a degree of uneasiness on the part of certain staff representatives. This case is concerned not with an examination of the Commission's personnel policy but with a decision as to the legality of the contested measures. It is apparent from the letter of 4 May 1981 from the President of the Commission to the applicant that at that time the Commission was considering dispensing with certain posts of chief adviser, including that of the applicant. That intention was confirmed by a letter to him of 24 June 1981. The decision to dispense with certain posts of chief adviser was adopted by the Commission on 8 July 1981. The effect of that decision is twofold. It abolishes the applicant's post and, consequently, retires him on the basis of Article 50 of the Staff Regulations. The decision adopted by the Commission on 28 July 1981 has another purpose, namely to give effect, with regard to the organization of the internal structure of the directorate general, to a series of decisions adopted by the Commission during the previous weeks. One of those decisions is that of 8 July 1981 to dispense with the post of chief adviser.

The Commission decided to establish the new structure proposed by the Commissioner with effect from 1 August, with the exception of certain decisions taking effect on 1 November 1981, including the transfer of the duties which fell within the area of responsibility of the chief adviser. That date is the effective date of the decision of 8 July 1981 to retire the applicant as chief adviser. The question whether the decision to abolish the post preceded or followed the decision to retire the applicant is entirely incidental. The only important question is whether or not the abolition of the post of chief adviser was in the interests of the service.

B — The decision not to assign the applicant to another post

The applicant objects to the fact that he was not assigned to another post corresponding to his grade and that he was not promoted to the grade of deputy director general in Directorate General IX, even though he possessed all the necessary abilities for at least one of those posts.

The applicant refers to his career both as head of the Recruitment Division from 1963 to 1968, head of the division dealing with the Staff Regulations and disputes procedures from 1968 to 1970,

director of the General Services and Offices Equipment Directorate from 1970 to 1980 and finally chief adviser from 1980 to 1981. As regards the post of Director of General Administration (Directorate General IX-B), that directorate is the result of the merger in June 1980 of the old Directorate B for Welfare, Training and Staff Information and the old Directorate C for General Services and Office Equipment, of which the applicant had been the director since 1970. The other vacant post was that of Director of Personnel. The applicant was suitable for that post but his capabilities were not considered and, moreover, the reasons for the rejection of his application were not stated.

As regards the post of Director of Personnel, an official in Grade A 3 was appointed to that post by promotion. The applicant maintains that an official in Grade A 2 who is retired must be reassigned to a vacant post in his grade for which he has the required qualifications in preference to an official in Grade A 3.

The Commission has, the applicant maintains, failed to fulfil its obligation to examine on its own initiative the possibilities of reassigning the applicant. The Commission created a post of deputy director general in Directorate General IX by decision of 15 April 1981. The duties attached to that post consist in particular of dealing with personnel and management questions, for which the applicant has the necessary qualifications.

The Commission replies that the third paragraph of Article 50 refers exclusively to the assignment of an official who is deprived of his post to another post in his category or service corresponding to his grade. There is no question therefore of assignment to a post in a higher grade, such as the post of deputy director general in Directorate General IX. Moreover, since the applicant did not apply for that post, he could not have been promoted to it.

As regards reassignment to another post corresponding to a retired official's grade, the Commission is vested with wide discretionary power. Its decision not to reassign an official to another post in the same grade does not require a formal statement of the grounds on which it is based. The Commission satisfied its obligation to give the official a prior opportunity to safeguard his rights, in particular at a meeting with his Director General during which his attention was drawn to 15 vacant A 2 posts.

As regards the post of Director of Personnel, the advisory committee, whose responsibility it is to assess the skills and aptitude of candidates for A 2 and A 3 posts in the light of the qualifications required in the notices of vacancy, examined Mr Angelini's application very closely. It nevertheless considered that regardless of his personal qualifications and merits the applicant did not have the required experience in general personnel management required by the vacancy notice. On conclusion of its proceedings, the Committee came to the conclusion that of the applications those of Messrs Piccarolo, Pratley and

Valsesia (in alphabetical order) deserved particular consideration. Following that opinion, the Commission, on a proposal from Commissioner O'Kennedy, decided to fill the post by appointing Mr Valsesia. The Commission denies that the applicant had any right to be assigned to the post in preference to an official in Grade A 3. By deciding not to assign the applicant to that post, by virtue of the fact that he did not have the required experience in general personnel management required by the vacancy notice, the Commission remained within the confines of the wide discretionary power vested in it in that regard. As regards the other post, that of Director of General Administration, the advisory committee also considered the applicant's application as a matter of priority but took the view that the conditions for his being recommended to the Commission were not satisfied. On completion of its proceedings, the committee came to the conclusion that of the applications those of Mr Pratley and Mr Reynier (in alphabetical order) deserved particular consideration.

After hearing the detailed description given by Commissioner O'Kennedy of the qualifications of the candidates, and taking into account the features of the post and the merits of each candidate and the opinion of the Director General for Personnel and Administration and of the advisory committee on promotions to Grades A 2 and A 3, the Commission decided that the conditions for acceptance of the applicant's application were not fulfilled and appointed Mr Pratley to that post. That directorate had a significant volume of new responsibilities by comparison with the administrative unit headed by the applicant from 1 April 1970 to 31 July 1980. Those new responsibilities are those of the Financial and Administrative Rights, Sickness and Accident Insurance and Building Loans and Welfare departments, in which areas the successful candidate had considerable practical experience, which was adjudged to be superior to that of the applicant.

In his rejoinder the applicant refers again to his practical experience in the two principal areas of responsibility of the Directorate General for Personnel and Administration. He does not understand the meaning of the term "general personnel management". The vacancy notice referred to a thorough knowledge of personnel policy and management. By virtue of the experience which he acquired over a period of seven years in the Directorate for Personnel the applicant, amongst his duties as chief adviser, was responsible for giving courses to very senior civil servants from the Member States, explaining the various personnel management methods and practices of the Commission.

Even though the preferential right of an official in Grade A 2 who is retired is not provided for *expressis verbis* in the second paragraph of Article 50 of the Staff Regulations, it is inherent in the nature of things, first for reasons of equity and secondly for reasons of stability of employment.

The applicant criticizes the opinion of the advisory committee on appointments to Grades A 2 and A 3 and also the Commission's decision making an appointment to the vacant post of Director of the Directorate for General Administration. After observing that the Commission had entrusted to the new

Directorate IX B the major part of the responsibilities, the committee noted that at the time of that reorganization the Commission did not appoint Mr Angelini as head of the new unit. The Commission, for its part, noted that on the occasion of that reorganization it had already taken a decision not to appoint Mr Angelini to be the head of the new unit. The opinion of the advisory committee is legally vitiated in so far as it does not refer to the applicant's qualifications on the pretext that the decision had already been taken, and the Commission's decision does not state the grounds on which it is based. The reply to the applicant's complaint to the effect that the decision not to accept his application was due to the fact that the directorate had a significant number of new responsibilities by comparison with the old administrative unit is not correct: the applicant's application was rejected because a decision had already been taken to reject it.

As regards the post of deputy director general, the defendant acknowledges that the applicant did not submit his application for that post for reasons beyond his control: in fact, the vacancy notice was published only in the Staff Courier of 29 October 1981, which was necessarily distributed after 1 November 1981, that is to say after the applicant had left the service. The applicant disputes the fact that the appointment involved promotion within the meaning of the Staff Regulations: it is a post classified in Grade A 2 in the list of posts and the defendant is under an obligation to examine the possibilities of reassigning the applicant to that post.

In its rejoinder the Commission describes the duties of the new Directorate A for Personnel and explains the procedure followed for the appointment of a new Director of Personnel. The person appointed, Mr Valsesia, has for many years competently dealt with all personnel matters at the Ispra Joint Research Centre and the appointing authority, after hearing the opinion of the advisory committee, considered that he was the most competent person for the post of Director of Personnel.

The Commission is of the opinion that whenever a preferential right in favour of certain categories of official exists in the law governing European officials that priority is the subject of an express provision, and there is no such express provision in this instance. The argument as to stability of employment is hardly relevant in the case of A 1 and A 2 officials for whom the Staff Regulations reserve special treatment.

The Commission also explains the two phases of the reorganization of Directorate B and the procedure followed for the appointment of its director. The new directorate has, in addition to its old responsibilities, a significant number of new responsibilities. They are the duties entrusted to the Financial and Administrative Rights and Sickness and Accident Insurance and Building Loans divisions. By approving the vacancy notice and instructing the Director General for Personnel and Administration to publish it, the Commission decided, by implication but unequivocally, not to reassign the applicant to that post. The advisory committee for appointments to Grades A 2 and A 3 noted that fact,

which the Commission confirmed at its meeting of 21 October 1981.

The post of Deputy Director General for Personnel and Administration is an A 1 post *ad personam*. That post could not be attributed *de plano* to the applicant but had to be allocated following a competition.

IV — Oral procedure

The parties presented oral argument at the sitting on 18 March 1983.

The Advocate General delivered his opinion on 30 June 1983.

Decision

1 By application lodged at the Court Registry on 23 April 1982, Mr Angelini, a former official in Grade A 2 of the Commission of the European Communities, brought an action for the annulment of the Commission's decision of 8 July 1981 retiring him and also for the annulment of the decision not to assign him to another post in his category corresponding to his grade.

2 The applicant was Director for General Services and Office Equipment in Directorate General IX for Personnel and Administration from 1970 to 1980. Following a reorganization of that directorate general, the number of directorates was reduced and the applicant was appointed chief adviser with various responsibilities which did not fall within the areas of responsibility of the other departments: in-service traineeships and exchanges for officials, and relations with the European Schools.

3 One year later, on 28 July 1981, the Commission again reorganized the Directorate General for Personnel and Administration, in particular in order to transfer the organization of in-service traineeships to the Secretariat General and that of exchanges for officials to the Careers Division. A special division was created for relations with the European Schools.

4 By letter of 4 May 1981 from the President of the Commission, the applicant was informed that the Commission was considering retiring him on the basis of Article 50 of the Staff Regulations of Officials. After taking note of the observations of the applicant, the Commission decided on 8 July 1981 to retire him in the interests of the service with effect from 1 November 1981. Since the applicant had not been assigned to another post in his category corresponding to his grade, he received the allowance payable in such cases.

5 In support of his application for annulment, Mr Angelini claims that the grounds of that decision were not adequately stated and that it was moreover vitiated by misuse of powers. The statement of grounds was excessively general and devoid of any specific details. A detailed statement of grounds was particularly necessary since the Commission had already reorganized that directorate general a year earlier. The decision retiring the applicant was adopted within the framework of a generalized application of Article 50 of the Staff Regulations intended to facilitate the replacement of senior officials when certain members of the Commission were changed, as occurs under the American "spoils system" where every change of President involves replacement of the senior officials. In this case the decision was in fact taken at a time when members of the Commission had just been reappointed or new appointments had just been made.

6 It has been held by the Court (judgment of 11 May 1978 in Case 34/77 *Oslizlok* v *Commission* [1978] ECR 1099) that the Commission has a wide discretionary power regarding decisions retiring officials in Grades A 1 and A 2. A power of that kind presupposes considerable freedom of decision regarding the objective requirements of the service and the assessment of the individual qualities of the officials concerned and also a scrupulous examination of the relevant information.

7 The Court has also had occasion to make it clear that the institutions are empowered to organize and reorganize their departments according to their requirements.

8 The grounds relied upon by the Commission in its letter of 4 May 1980 and in the contested decision refer to the guidelines adopted by the Commission at its meeting of 26 March 1980 primarily on the basis of the Spierenburg and Ortoli reports. According to the Commission the reorganization was to affect more particularly the senior posts and to involve the abolition of certain posts of chief adviser, including the applicant's post.

9 It is apparent from the documents published by the Commission that, following discussions within the Commission in September 1978, a group of five independent leading figures, presided over by the Ambassador Dirk Spierenburg, former Vice-President of the High Authority of the European Coal and Steel Community and former Permanent Representative of the Netherlands, was set up in January 1979 to examine the organization and functioning of the Commission. The group presented its report on 24 September 1979. It was widely publicized and was debated in the European Parliament. The third part of the report recommended certain changes in the administrative policy and organization of the Commission, including a reduction of the number of basic administrative units. The Commission accepted the principle of that reduction at a meeting held in October 1979. That meeting was followed by a statement to the Press by the President of the Commission, Mr Jenkins. The Commission also set up a working group under the chairmanship of Mr Ortoli which reported in March 1980.

10 These facts show that the internal reorganization of the Commission was thoroughly discussed over a long period and cannot be ascribed exclusively to the fact that new members of the Commission had been appointed. The fact that a relatively high number of senior officials were thus retired at the same time as the applicant does not, in itself, constitute a misuse of power. Therefore, in the absence of any other evidence to support the applicant's allegations, the accusation of misuse of powers must be rejected.

11 Finally, it is to be noted that the applicant had an opportunity to safeguard his interests, in so far as he was advised of the Commission's intentions by a letter of 4 May 1981. In that letter the Commission stated that it considered

the applicant's post no longer to be necessary. The applicant was thereby provided with a sufficient basis to enable him to draw attention to the advantages which might accrue to the Commission from the retention of a post of chief adviser with a view to the discharge of the duties attaching to that post until that time.

12 The application for annulment of the decision to retire the applicant must therefore be rejected.

13 In the alternative, the applicant claims that in the light of his experience he should have been assigned to another post, in particular the post of Director of Personnel or that of Director for General Administration. He maintains that his qualifications for those posts were not examined and that the decisions rejecting his applications did not state the grounds on which they were based. Subsequently, an official in Grade A 3 was appointed to the post of Director of Personnel. According to the applicant, an official in Grade A 2 who has been retired ought to be reassigned to a post for which he has the required skills in preference to an official in Grade A 3. Finally, the applicant considers that he should have been appointed to the post of deputy director general in the Directorate General for Personnel and Administration.

14 It should be noted in that connection that the Commission is vested with a wide discretionary power with regard to any decision to reassign officials to another post in the same grade. The officials whom the Commission has decided to retire do not enjoy any preference in that respect over the other officials who qualify for consideration. They must however have an adequate opportunity properly to safeguard their interests.

15 It is apparent from the documents before the Court that the applicant had an opportunity to submit an application for the posts both of Director of Personnel and of Director for General Administration. In both cases, the Commission undertook a comparative examination of the various candidates and chose to appoint a person other than the applicant to the vacant post. Those decisions were therefore taken in accordance with the applicable rules of the Staff Regulations.

16 Therefore, the applicant's alternative claim for annulment of the decision not to assign him to another post must also be rejected.

Costs

17 Under Article 69 (2) of the Rules of Procedure, an unsuccessful party is to be ordered to pay the costs.

18 However, under Article 70 of the Rules of Procedure, in proceedings by servants of the Communities institutions must bear their own costs.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the parties to pay their own costs.**

Everling Mackenzie Stuart Galmot

Delivered in open court in Luxembourg on 28 September 1983.

For the Registrar

H. A. Rühl

Principal Administrator

U. Everling

President of the Third Chamber